



# Maternal Custody in Lebanon

*Amidst Conflicting Personal Status Laws*

Authored by

**Elissa Moussawi**

01FEB2022

## **Abstract**

This article discusses the differing and varied maternal custody laws, customs, and common practices within the Lebanese state amidst a multitude of archaic and multi-varied personal status laws. Lebanon has 18 recognized sects, and Law 60 of 1936 grants the sects the right to regulate their affairs on both legislative and judiciary levels, hence each religious sect applies its own rules which are applied in court disputes related to family matters such as divorce, marriage, inheritance, and care of children. The negative implications of such a multiplicity of religious laws are important: with no unified civil code regulating personal status matters, and with a patriarchal religious system in place, clear discriminations against women are often found in religious laws, especially in relation to children's custody. Moreover, a child's best interest and welfare are rarely taken into consideration in court rulings, in which joint custody is not recognized. That being the case, the mother is given custody until a certain age (which varies depending on the religious sect of the father), after which the father or the paternal family gets custody.



## Table of Contents

Abstract.....	2
Table of Contents.....	3
On Personal Status Laws .....	4
Brief History .....	4
Religious Courts .....	6
Variance of Sectarian Custody.....	8
Custody in Sharia.....	8
Custody Among the Druze.....	9
Custody amongst Christians .....	10
Conclusion .....	11
Bibliography .....	12
Legislative Sources.....	12
Secondary Sources.....	12
Reports .....	12
Article .....	12
Websites.....	12

## On Personal Status Laws

### Brief History

Personal status originated in the Europe of the Middle Ages, and it referred to individuals' social conditions that distinguishes them from one another. Lebanon's personal status laws are based on a system of religion, tradition, and customs. The French High Commissioner officially recognized different religious sects in Legislative Act No. 36/1936 and he divided the sects as follows:

- Christians:
  - Catholic:
    - Maronite
    - Melkite
    - Armenian
    - Syriac
    - Roman Catholic
    - Chaldean
  - Orthodox
    - Greek
    - Syriac Orthodox
    - Armenian
    - Nestorian
  - Protestant
- Muslims:
  - Jaafari

- Sunni
- Druze
- Israelites.
  - Synagogue of Beirut
  - Synagogue of Aleppo
  - Synagogue of Damascus

The personal status laws of these sects were issued and amended in-between 1942 and 1962, with some of them being from the time of the French Mandate. Indeed, the Muslim codes were based on the 1917 Ottoman Family Law, which makes all of these laws rather ancient and outdated. There is a recognizable popular and professional consensus on the need to reform and modernize these laws. Recognizing their archaity, Human Rights Watch reported the following in 2015:

*‘One solution is to adopt a civil code that would ensure equal rights for all Lebanese, regardless of gender or religion. Current efforts to adopt a civil code have focused on making it optional for people. In that sense, it would operate alongside religious laws. ... Yet such a law alone will not be enough to end the discrimination in personal status that stems from existing religious personal status laws. Fundamental changes must also be made to existing religious legal codes, and state institutions must exercise oversight over religious courts and texts.’<sup>1</sup>*

---

<sup>1</sup> (Human Rights Watch, 2015)

## Religious Courts

Lebanon's multiple personal status laws are put to practice by autonomous religious courts in which judges enjoy discretionary power. They are special bodies and have specialized jurisdiction, meaning that they possess the authority to rule in matters relating to personal status. Religious bodies are responsible for appointing these judges and overseeing the courts. Each sect has its own courts, and to further understand how they work, it is important to understand their structure.

- First-instance courts are divided as follows:
  - o 12 Sunni,
  - o 16 Jaafari,
  - o 6 Druze,
  - o 1 Protestant,
  - o 1 Catholic first instance court in every diocese,
  - o 1 Orthodox first instance court in each archdiocese.
- Sunni, Jaafari, and Druze court decisions can be appealed to their respective Supreme Courts, all located in Beirut. Catholic and orthodox court decisions must be appealed to appellate courts.

Discrimination against women in fact results not only from the unfair religious laws, but also religious courts' procedures. These include high fees, lengthy lawsuits, and lack of legal assistance during legal proceedings. Furthermore, the Court of Cassation, which is the highest civil court in the Lebanese judicial system, has limited oversight regarding religious court proceedings and decisions. Christian courts are administratively and financially independent, and Muslim



courts, although historically affiliated and funded by the state, are operationally independent of state institutions.<sup>2</sup>

---

<sup>2</sup> (Human Rights Watch, 2015)

## Variance of Sectarian Custody

### Custody in Sharia

The Shiite sect being the strictest among Muslim sects when it comes to the age of custody, articles in the Jaafari Judiciary Directory on personal status laws clearly state that mothers are given custody of their daughters until the age of 7, whereas they get custody of their sons only until the age of two<sup>3</sup>. Not only is the age of maternal custody low, but other discriminatory rules are set against mothers. In fact, article 349<sup>4</sup> withdraws custody from the mother in case she remarries. Also, a non-Muslim mother cannot get custody of her Muslim child. The law also states that maternal custody can be rescinded while paternal custody is a firm right and cannot be rescinded: mothers usually relinquish their custody rights in exchange for their husbands complying with their divorce demands. Shiite personal status law does not recognize a women-led separation. Despite being a rare occurrence, the judge does maintain a right to discretion and can overlook the law and grant custody according the child's best interest.

Given that demands for a unified civil personal status law that guarantees equality for both genders in family matters have constantly failed to materialize, several campaigns and demonstrations in front of the Supreme Islamic Shiite Council have been calling to raise the age of maternal custody by reforming the existent Shiite personal status laws and to establish a shared custody system afterwards which would allow both parents to be custodians over their child. The Shiite community has so far failed to raise the maternal custody age, civil campaigns by the

---

<sup>3</sup> Article 348; [1994]. Ja'afari Judiciary Directory: "The mother is entitled to custody of her child, male or female, while breastfeeding. When the child is weaned, a father is entitled to his son and the mother is entitled to her daughter until she reaches 7"

<sup>4</sup> Article 349; *supra*: "Maternal custody rights are not to be withdrawn before 2 years of age for boys, or before 7 years of age for girls, unless the mother remarries during that period. If she remarries maternal custody is rescinded and transferred to the father"



“Family Rights Network” which officially began in 2006 have successfully resulted in the reform of custody age within the Sunni sect. The highest Sunni religious authority, the grand mufti Sheikh Mohammad Rachid Kabbani, had announced that the custody age would be amended to age 12 for both girls and boys. Moreover, the parliament agreed to ratify Law no.177 of 29 August 2011, which amended article 242 of the Law of 16 July 1962 relating to the organization of Sunni and Shi’ite courts, therefore allowing the change in custody age to become applicable in Sunni religious courts. The campaign’s success was not only due to the strong pressure from women’s rights groups, but also because the main argument used during that campaign was the fact that no scriptural text in the Holy Qur’an specifies the proper custody age.<sup>5</sup>

### **Custody Among the Druze**

On September 19 2017, the Lebanese parliament passed Law 58, which amend 16 articles of the Druze personal status law of February 24, 1948. The most significant amendment was related to custody age, raising it from 7 to 12 years for boys and from 9 to 14 for girls. The statement of reasons for the amendments provided was respecting the constitution which emphasizes on equality between women and men. The reform was also based on a “development of laws in accordance with how society evolves”,<sup>6</sup> as well as in relation to the stages of a child’s development on the physiological and psychological levels.

Nevertheless, discrimination issues remain within Druze laws: like in Shia and Sunni laws, maternal custody ends if the mother gets remarried, although in this situation it may be granted to the maternal grandmother. In fact, alongside the concept of custody, religious courts recognize the concept of “guardianship” which includes “the preservation and upbringing of children and their

---

<sup>5</sup> (Dabbous, 2017)

<sup>6</sup> (Karame, 2018)

assets until they reach adulthood”. The right to guardianship in all religious sects except in the Armenian-orthodox sect, is given to the father. The distinction here between the terms of “custody” and “guardianship” is important because it shows the unequal nature of religious laws: “maternal custody rights unlike paternal guardianship rights are time-bound, conditional, and revocable”.<sup>7</sup>

### **Custody amongst Christians**

The Catholic church sets the lowest legal age of custody at the age of breastfeeding (approximately 2 years) and religious courts have a discretionary power in granting custody by considering the best interests of minors.<sup>8</sup> For the Armenian Orthodox, the Syriac Orthodox, and the Assyrian churches, the age of custody is 7 for males and 9 for females. The Protestant churches set the same custody age of 12 for both males and females. The Greek Orthodox church however, sets the highest age of custody at 14 for males and 15 for females.

Within the Christian sects, several reasons can cause a woman to lose her custody of the children, including:

- If she remarries after dissolution of the marriage or after the death of her husband.
- If she’s considered ethically incorrect or unfit to raise a child by Christian values.
- If she initiates the separation or divorce.

However, Christian communities have unanimously agreed on the right of a mother to be granted **guardianship** (and not custody) when marriage is dissolved because of the father.

---

<sup>7</sup> (Human Rights Watch, 2015)

<sup>8</sup> (KAFA)



## **Conclusion**

It is only normal to question the state's authority and its role in legislating a civil law that regulates the civil status of its citizens when religious communities continue to dictate the laws to which each individual is subjected to according to his religion and confession. It is also normal to question the conformity of the state to the Lebanese Constitution which emphasizes on equality between individuals in their rights and duties. Today, we still witness children forcefully being taken away from their mothers because of court rulings that are applying outdated religious laws without any consideration to the child's psychological or physical well-being. Therefore, it is crucial to restore a balance in family matters, and to ensure that women are given a fair and equal opportunity in parental authority, where they can oversee their children's needs and participate in their upbringing even after a divorce.

## Bibliography

### Legislative Sources

[1994] Ja'afari Judiciary Directory.

### Secondary Sources

#### Reports

Human Rights Watch. [2015]. *Unequal And Unprotected*.

<https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws>

Human Rights Watch. [2015]. *Human Rights Watch Submission to the CEDAW Committee of Lebanon's Periodic Report 62nd Session*. [PDF].

[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LBN/INT\\_CEDAW\\_NGO\\_LBN\\_19385\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LBN/INT_CEDAW_NGO_LBN_19385_E.pdf)

#### Article

Dabbous, Dima. [2017]. *Legal Reform and Women's Rights in Lebanese Personal Status Laws*. CHR Michelsen Institute. <https://www.cmi.no/publications/6341-legal-reform-and-womens-rights-in-lebanese>

#### Websites

KAFA. *Christian Personal Status Laws*. KAFA. <https://kafa.org.lb/en/faq/personal-status-law-christian>



Karame, Lama. [2018]. *Lebanon's Druze Personal Status Law: Developing Deference to the Constitution*. The Legal Agenda. <https://english.legal-agenda.com/lebanons-druze-personal-status-law-developing-deference-to-the-constitution/>